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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DOW JONES & COMPANY, INC.,

Plaintiff,

- against -

BRIEFING.COM, INC.,

Defendant.

Civil Action No. 10-CV-3321 (VM)

**PLAINTIFF'S REPLY TO  
COUNTERCLAIMS  
OF DEFENDANT BRIEFING.COM**

Plaintiff Dow Jones & Company, Inc. ("Dow Jones"), by and through its attorneys, Patterson Belknap Webb & Tyler LLP, reply to the Counterclaims of Defendant Briefing.com, Inc. ("Briefing.com"), included in its May 11, 2010 Answer and Counterclaim, as follows:

**COUNT I**  
**RESPONSE TO FIRST COUNTERCLAIM**  
**(Breach of Contract)**

1. Plaintiff Dow Jones admits the allegations contained in paragraph 1 of the Counterclaims.

2. Answering paragraph 2 of the Counterclaims, Plaintiff Dow Jones refers the Court to the June 19, 1998 content license agreement (as amended, the "Content License"), for a full and accurate recitation of the contents thereof.

3. Plaintiff denies the allegations contained in paragraph 3 of the Counterclaims.

4. Plaintiff neither admits nor denies the allegations contained in paragraph 4 of the Counterclaims to the extent that they contain legal arguments and/or conclusions, refers the Court to the Content License for a full and accurate recitation of the contents thereof, and otherwise denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph 4.

5. Answering paragraph 5 of the Counterclaims, Plaintiff Dow Jones refers the Court to the Content License for a full and accurate recitation of the contents thereof.

6. Plaintiff Dow Jones denies the allegations contained in paragraph 6 of the Counterclaims.

7. Plaintiff Dow Jones denies the allegations contained in paragraph 7 of the Counterclaims.

8. Plaintiff Dow Jones denies the allegations contained in paragraph 8 of the Counterclaims.

9. Plaintiff Dow Jones denies the allegations contained in paragraph 9 of the Counterclaims.

**COUNT II**  
**RESPONSE TO SECOND COUNTERCLAIM**  
**(False Designation of Origin Pursuant to § 43(a) of the Lanham Act)**

10. Plaintiff Dow Jones admits that its copyright notice appears on certain pages of the Dow Jones Newswires that include a report of ratings change announcements issued by various third parties and publicized by Briefing.com, and otherwise denies the allegations contained in paragraph 10 of the Counterclaims.

11. Plaintiff Dow Jones denies the allegations contained in paragraph 11 of the Counterclaims. Plaintiff Dow Jones specifically denies that its copyright notice is improperly displayed pursuant to the Copyright Act. Further, Dow Jones asserts that, pursuant to well-settled law set forth in decisions of the United States Supreme Court and the United States Court of Appeals for the Second Circuit, Dow Jones' display of its copyright notice, even if erroneous, is not an actionable violation of the Lanham Act.

12. Plaintiff Dow Jones denies the allegations contained in paragraph 12 of the Counterclaims.

13. Plaintiff Dow Jones denies the allegations contained in paragraph 13 of the Counterclaims.

14. Plaintiff Dow Jones denies the allegations contained in paragraph 14 of the Counterclaims.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

15. As to both Counterclaims, Defendant Briefing.com has failed to state a claim upon which relief can be granted.

#### **Second Affirmative Defense**

16. Both of Defendant Briefing.com's Counterclaims are barred by the doctrine of unclean hands.

#### **Third Affirmative Defense**

17. Both of Defendant Briefing.com's Counterclaims are barred by the doctrine of estoppel.

**Fourth Affirmative Defense**

18. Both of Defendant Briefing.com's Counterclaims are barred by the doctrine of laches.

**Fifth Affirmative Defense**

19. As to both Counterclaims, Defendant Briefing.com has failed to mitigate its damages, if any.

**Sixth Affirmative Defense**

20. Both of Defendant Briefing.com's Counterclaims are barred by one or more applicable statutes of limitations.

**Seventh Affirmative Defense**

21. As to both Counterclaims, any injury allegedly suffered by Defendant Briefing.com was not caused by any act or omission of Plaintiff Dow Jones.

**Eighth Affirmative Defense**

22. On information and belief, Defendant Briefing.com publishes stock ratings change reports on a portion of its website fully accessible to the public and not subject to restrictions on use or distribution. Thus, Defendant Briefing.com's First Counterclaim is barred by the doctrines of waiver and abandonment.

**Ninth Affirmative Defense**

23. Defendant Briefing.com's First Counterclaim is barred because Plaintiff Dow Jones is licensed by Briefing.com to publish the content at issue.

**Reservation of Other Affirmative Defenses**

24. Plaintiff reserves the right to assert additional affirmative defenses.

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WHEREFORE, Plaintiff Dow Jones denies that Defendant Briefing.com is entitled to any injunctive, equitable, or other relief whatsoever, denies that Defendant Briefing.com is entitled to any judgment or monetary judgment from Plaintiff in any amount whatsoever, and requests judgment dismissing the Counterclaims in their entirety, together with Plaintiff's attorneys' fees and such other and further relief as the Court deems just and proper.

Dated: New York, New York  
June 1, 2010

Respectfully submitted,

PATTERSON BELKNAP WEBB & TYLER LLP



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